

DATO' SERI ANWAR IBRAHIM

a

v.

KETUA POLIS NEGARA

HIGH COURT MALAYA, KUALA LUMPUR

b

ABDUL WAHAB PATAIL J

[CRIMINAL APPLICATION NO: 44-103-98]

28 OCTOBER 1998

CRIMINAL PROCEDURE: *Habeas corpus - Application against the Inspector General of Police Malaysia - Applicant no longer in custody of Inspector General of Police - Whether application frivolous*

c

CRIMINAL PROCEDURE: *Judge - Disqualification - Matter to be heard by judge - Whether a triable matter - Whether frivolous - Whether disqualification of judge necessary*

d

The applicant, the former Deputy Prime Minister of Malaysia, sought for a *habeas corpus* application which was against the Inspector General of Police Malaysia. The applicant argued that his arrest, detention and charges against him were tainted with *mala fide*, so were his transfer to another prison and the remand order of the High Court of 5 October 1998. The applicant also argued that the subsequent trial to be held was likewise tainted.

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In this instance, the applicant also sought to disqualify the judge to hear the said application.

Held:

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[1] The rules or practise pertaining to a judge disqualifying himself are quite established. However, it would be irresponsible of the judge to discharge himself on frivolous grounds, since he would be shirking his duties and transferring his burden upon other judges.

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[2] Whatever grievance the applicant might have against the Inspector General of Police could not be the subject matter of a writ of *habeas corpus* where that person is no longer in his custody. To pursue this writ of *habeas corpus* was frivolous. There was no triable matter. The matter was plainly and obviously frivolous and it was not necessary to seek the disqualification of the judge.

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[3] The applicant was currently held under remand by an order of the High Court before which his trial was pending. It is wholly wrong in law

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- a* and in principle, for a court of co-ordinate jurisdiction to contest that order. The applicant's proper avenue of redress was by way of an appeal and not by this collateral application.

[Application dismissed.]

- b* *[Editor's note: This judgment was received on 18 February 1999.]*

For the appellant - Sulaiman Abdullah (Zainur Zakaria, Sarkara N Nair, Pawancheek Merican & Gurbachan Singh with him); M/s Zainur Zakaria & Co

For the respondent - Kamaludin Mohd Said; DPP

- c* *Reported by Usha Thiagarajah*

JUDGMENT

Abdul Wahab Patail J:

- d* This is a court of law. I like to run my court as a court of justice according to law.

You will appreciate that justice is only achievable if a solid foundation of truth is laid.

- e* Truth itself is obtainable only if evidence and facts are presented in utmost honesty and good faith. These are the basic elements of good advocacy.

Good advocacy also requires parties to act with civility and discretion, avoiding actions merely sensational, so that we can focus our attention on determining what is the truth in the case.

- f* For this reason I have sought to have the elementary facts established.

The rules or practise pertaining to a judge disqualifying himself are quite established.

- g* Firstly,

If he is aware of relationship, whether relative, close friend or partner, or where he has a conflict of interest, these are matters known to him and the other party before him may not necessarily know of it, he is duty bound to disclose it.

- h*

Secondly,

Where he is not aware, but a party knows of such possible relationship or conflict, he brings it to the attention of the judge.

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A judge cannot necessarily know of such possible conflict from perusing the documents. I am after all, not my brother's keeper. **a**

Note that the exercise pertains to disqualification of the judge, not the court.

The usual practice is for a party knowing of such possible conflict, even though not necessarily intending to object, to request to see the judge in the presence of the other party in chambers. **b**

If the party disagrees with the judge's intention not to disqualify himself, then only the matter is raised in open court, and the judge will make a ruling upon it, and which like all rulings, may be the subject of appeal if the party is dissatisfied with it. **c**

A judge has very clear responsibilities. It would be irresponsible to discharge himself on frivolous grounds, since he would be shirking his duties and transferring his burden upon other judges. **d**

Furthermore, disqualifications if lightly taken, facilitates picking and choosing of judges to hear cases.

From the evidence before me today, we have a *habeas corpus* application, directed upon the Ketua Polis Negara, to produce to the court a person who is no longer in his custody. Whatever grievance the applicant may have against the Ketua Polis Negara cannot be the subject of a writ of *habeas corpus* where that person is no longer in his custody. To pursue this writ of *habeas corpus* at this time is frivolous. There is no triable matter in this writ of *habeas corpus*. It is not necessary for me to disqualify myself where the matter is plainly and obviously frivolous. **e**

To maintain his argument for a writ of *habeas corpus* it is now argued by counsel that the arrest, detention, charges, transfer to Sungai Buloh Prison and the remand order of the High Court of 5 October 1998 are tainted by *mala fide*. Counsel even submitted that even the subsequent trial to be held is tainted. **f**

These are far reaching and scandalous allegations, as incredible as an allegation, as being told an alien spaceship has landed in Merdeka Square. It cannot be for any other purpose but to contrive to be sensational, and keep alive a wholly unsupportable application. **g**

The submissions only show that whatever grievance the applicant may have, political or otherwise, is clearly not the subject of a *habeas corpus* application. The applicant is currently held under remand by an order of the High Court before which his trial is pending. It is wholly wrong, in law and principle, **h**

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a for a court of coordinate jurisdiction to contest that order. The applicants' proper avenue of redress is by way of an appeal, and not by this collateral application.

b On these plain and obvious grounds there is no merit in pursuing this application after the applicant had been released to Sungai Buloh under court remand. It ought to be dismissed immediately and I cannot lend it any appearance of propriety by referring it to another judge.

I hereby dismiss this application.

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